

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

CALOMIRIS YMCA PROGRAM CENTER  
(BEFORE & AFTER)  
Respondent

Case Nos.: I-02-42031  
I-02-42038

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**FINAL ORDER**

**I. Introduction**

On September 4, 2002, the Government served a Notice of Infraction on Respondent Calomiris YMCA Program Center (Before & After) alleging that it violated 29 DCMR 325.4, which requires a child development center to have on file a report of an annual physical examination for each child, and 29 DCMR 325.9, which requires a child development center to have on file a copy of an emergency medical authorization from the child's parent or guardian. The Notice of Infraction alleged that the violations occurred on June 7, 2002, and sought a fine of \$500 for each violation, a total of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on October 8, 2002, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$1,000 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The order also required the Government to serve a second Notice of Infraction.

On October 22, 2002, Respondent filed an untimely answer with a plea of Admit with Explanation, together with a request for suspension or reduction of the fines and the statutory penalty. The Government has filed a reply to Respondent's submission.<sup>1</sup> In accordance with the October 8 Order, the Government served a second Notice of Infraction (No. 42038) upon Respondent on October 28, 2002. Because Respondent already had answered the first Notice of Infraction by the date of service, the second notice will be dismissed as moot.

## **II. Summary of the Evidence**

Respondent contends that it had been maintaining its records in a manner that had been found to be acceptable during previous inspections. It states that, after the June 7, 2002 inspection that resulted in the issuance of the Notice of Infraction, it received additional information about its obligations and corrected the infractions. Respondent also contends that it never received the first Notice of Infraction, but responded promptly when it became aware of the issuance of that notice (apparently through its receipt of the October 8 Order).

The Government states that "some reduction of the fines or penalties may be appropriate" in light of Respondent's admission to the charges and its willingness to resolve the matter without a hearing. The Government, however, disputes Respondent's claim that the violations resulted from a misunderstanding of the regulations. It also contends that Respondent was slow to correct the violations, as follow-up visits on July 23, July 26, August 30 and November 17 revealed that the violations still were present. The Government takes no position on Respondent's request for suspension of the statutory penalty for its untimely answer.

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<sup>1</sup> The Government's consent motion for an extension of the deadline to file its response will be granted.

### **III. Findings of Fact**

Respondent's plea of Admit with Explanation establishes that it failed to have current medical examination reports and emergency medical care authorizations for some of the children in its care on June 7, 2002. While Respondent claims that its failures arose out of a misunderstanding about record keeping requirements, it does not describe in any detail its misunderstanding of the rules or the records that actually were available when the inspector visited. Without that information, I have no basis for determining that Respondent acted reasonably in the circumstances. Based on the Government's un rebutted submission, I find that Respondent did not correct its violations for several months. Respondent's plea of Admit with Explanation evidences some acceptance of responsibility, and there is no evidence that it has a history of violations.

Based on Respondent's un rebutted submission, I find that Respondent did not receive the first Notice of Infraction, but responded promptly upon receipt of the October 8 Order.

### **IV. Conclusions of Law**

Respondent's plea of Admit with Explanation establishes that it violated 29 DCMR 325.4 and 325.9 on June 7, 2002. A violation of each rule is a Class 2 infraction, subject to a \$500 fine for a first offense. 16 DCMR 3222.1(m), (p); 16 DCMR 3201. Respondent's claim that the violations arose from a misunderstanding does not warrant any reduction in the fine amount.

Each rule is clear on its face.<sup>2</sup> Respondent has not explained how or why it understood those rules to mean something other than what they say, *i.e.*, that their child development center must have annual physical examination reports and emergency medical treatment forms for each child in its care. Moreover, Respondent failed to correct the violations for several months. In light of these factors, I will order only a small reduction in the fine based on the mitigating evidence of Respondent's lack of prior violations, its partial acceptance of responsibility, and the Government's consent to a reduction. I will impose a total fine of \$875 for both violations.

The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires a Respondent to demonstrate "good cause" for failing to answer a Notice of Infraction within 20 days of the date of service by mail. If the Respondent does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Respondent did not receive the first Notice of Infraction, and there is no evidence that it was at fault in that regard. Non-receipt of a Notice of Infraction, through no fault of the Respondent, constitutes good cause for not filing a timely response. *DOH v. Scott*, OAH No. I-00-20345 at 7 (Final Order July 30, 2002); *DOH v Galeano's Trucking*, OAH No. I-00-11097 at 5 (Final Order, April 22, 2002). Accordingly, I

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<sup>2</sup> 29 DCMR 325.4 provides:

After admission to a child development facility, each infant or child shall be required to obtain an annual physical examination, the results of which shall be submitted to the caregiver or director of the child development facility on a form approved by the Mayor.

29 DCMR 325.9 provides:

The parent or guardian of each infant or child admitted to a child development facility shall submit to the caregiver or director of the facility, on a form approved by the Mayor, authorization for emergency medical treatment for the infant or child.

will not impose any statutory penalty for Respondent's failure to answer the first Notice of Infraction.

**V. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2003:

**ORDERED**, that Notice of Infraction No. 42038 is **DISMISSED AS MOOT**; and it is further

**ORDERED**, that the Government's motion for extension of the deadline for filing its response is **GRANTED**; and it is further

**ORDERED**, that Respondent shall pay a total of **EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$875)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code

§ 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**/s/ 02/1//03**

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John P. Dean  
Administrative Judge